hvn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2687 OF 2006

Maharashtra Rajya Rashtriya Kamgar
Sangh, Mazdoor Manzil, G.D. Ambedkar
Marg, Parel, Mumbai 400 012. ... Petitioner

Versus

1. Kamgar Suraksha Sangh,
37-B, Sagar Bonanza Shopping Centre,
J.V. Road, Ghatkopar (W),
Mumbai 400 086.

2. Shangrila Food Prodcuts Ltd.
L.B.S. Road, Bhandup (W),
Mumbai 400 078. ... Respondents

Mr. C.U. Singh, Sr. Counsel with Ms. Sushma Joshi i/by Haresh Metha & Co. for Petitioner.

Mr. Arshad Shaikh with Mr. K.N. Champaneria for R. No. 1.

Ms. P. Purav for R. No. 2.

CORAM: F.I. REBELLO &
ANOOP V. MOHTA,JJ.
DATED: DECEMBER 20, 2006

ORAL JUDGMENT (Per F.I. Rebello,J.):

. Rule. Heard forthwith.

2. The Respondent No. 1 had filed an application under Section 14 of the M.R.T.U. & P.U.L.P. Act. The Petitioners herein at the time of filing the application was the recognized union. The parties led evidence before the learned industrial Court who by the impugned order dated 18.10.2006 was pleased to allow the application filed by the Respondent No.

1 Union.

. While allowing the application, the learned Industrial Court was pleased to cancel the recognitions of the Petitioner No. 1 and instead recognized Respondent No. 1 as the recognized union in the company. This order is the subject matter of the present petition.

3. At the hearing of this Petition, on behalf of the Petitioner, their learned counsel has raised various grounds assailing the impugned order. On behalf of the Respondent No. 1, the learned counsel points out to us that there is evidence both oral and documentary which would indicate that it is the respondent No. 1 union which had established, not only that it had more than 30% of the membership amongst the workmen employed in the Industrial establishment but also had majority of membership amongst the workmen. It is submitted that even if there be some lacuna, in the order of the Industrial Court, considering the documentary evidence on record, this court in the exercise of its extra ordinary jurisdiction should not interfere with the said order.

4. Heard learned counsel for the parties. In the first instance, an applicant under Section 14 must

also meet the requirement of Section 11 of M.R.T.U. & P.U.L.P. Act. In other words, in respect of the Union to be recognized, a finding must be recorded by the Industrial Court that it has more than 30% of the membership of the workmen employed in the Industrial Establishment and if both the Unions have 30% then who amongst them commands the majority or more membership amongst the workmen. It is only on recording such a finding, can the Industrial court grant or cancel recognition.

5. We have perused the impugned order. The learned Industrial Court has no doubt framed the correct issue for its consideration. However, we find from the consideration of Paragraphs 13, 14, 15 and 16 that the learned Industrial Court proceeded on the footing that I.O. had examined the records of the Membership of both the Petitioner and Respondent No. 1 and had held that the Respondent No. 1 had membership of 154 employees out of 165 employees at the relevant period whereas the Petitioner Union had membership of 137. The I.O. has also recorded a finding that 135 workmen were claimed as members by both the Petitioner and Respondent No. 1. After having so recorded, the learned Industrial Court proceeded on the footing that Respondent No.1 had 93.33% and Petitioner had 83.03 % of the total Membership and if common members were excluded the

respondent No. 1 had 12.73% and Petitioner Union had 2.4% membership. It is based on these percentages, proceeded to pass the impugned order.

. We are clearly of the opinion that the learned Court misdirected itself in law in basing its findings by including common members. The very basis to allow an application is after recording a finding, as to who amongst the unions claiming recognition or cancellation enjoys majority support for the relevant period. In the instant case, the relevant period is May to October, 2003. Common membership cannot be the basis for decision as then it is not possible to decide as to who amongst the workmen has the loyalty towards the union. The concept of recognizing an union as the sole bargaining agent is to enable that union to collectively bargain on behalf of the Workmen. To confer such a power it must command support of majority of the workmen and which must be at least 30%. In such a situation the Tribunal when both unions are claiming common membership, must from evidence record a finding as to which union the workers were members for the relevant period. The findings recorded by the Industrial Court does not meet this test.

. The other aspect of the matter is that there is

evidence both documentary and oral which was available to the Industrial court, but has not been considered. The Industrial Court ought to have considered in the case of common membership, the contemporaneous evidence at the relevant time to find out as to who amongst the workmen were members of the either Petitioner Union or Respondent No. 1. This exercise was not done.

. The grievance of the Respondent No. 1 is that they had sought verification of membership which was opposed to by the Petitioner union. This aspect also has not been considered by the Industrial Court while recording its finding that the Respondent No. 1, enjoys majority support, amongst the workmen engaged in the Industrial establishment. In our opinion the impugned order therefore, is liable to be set aside and quashed in the exercise of our extra ordinary jurisdiction.

6. Considering however, the fact, that parties have led evidence, in our opinion, the ends of justice will be met if the matter is remanded back to the Industrial Court to hear oral arguments of the Parties afresh and after considering the evidence on record both documentary as well as oral, to give a finding of fact, not based on common membership but as to who amongst the Petitioners and Respondent No.

1, enjoys majority support for the relevant period of May to October, 2003. This exercise to be completed within eight weeks from a copy of this order being made available to the learned Industrial Court.

7. Pending the hearing and final disposal of the proceedings before the learned Industrial Court, the company not to enter into settlement with either both Petitioner and or Respondent No. 1.

. Rule made absolute accordingly. No order as to costs.

(ANOOP V. MOHTA,J.) **(F.I.REBELLO, J.)**